

Allowability of Procurement Fees in SFA Contracts

PURPOSE: To provide clarification of what is allowable, for contracts executed both prior to and after publication of the final rule.

SCOPE: Organizations participating in the National School Lunch Program and the School Breakfast Program.

DESCRIPTION:

We have received a number of inquiries recently regarding the allowability of procurement fees in School Meal Program contracts. Many of the questions resulted from publication of the final procurement rule in October 2007, and involve the interaction of procurement fees with discounts, rebates, and applicable credits. This memorandum is intended to provide clarification of what is allowable, for contracts executed both prior to and after publication of the final rule.

For contracts executed after the November 30, 2007, effective date of the final rule, discounts, rebates and applicable credits must be returned to the SFA's nonprofit school food service account. Therefore, any fee (including a procurement fee) that is directly tied to the amount of discounts, rebates, and applicable credits to be returned to the SFA is an unallowable nonprofit school food service account cost, as it undermines the intent of the new regulation. A fee structured in this way is clearly intended to return some or all of the discounts, rebates, and applicable credits to the company with whom the SFA has contracted for services rather than to ensure that they accrue to the nonprofit school food service account. This is true whether the fee is set forth in the solicitation/contract or not.

SFAs may, however, develop solicitations in a way that allows for management and/or administrative fees that include fees for procurement services. The procurement fee could be a separate fee or part of another contract fee, as long as it remains fixed.

For contracts that pre-date the effective date of the final procurement regulation, procurement fees are allowable, even if they are tied directly to the amount of discounts, rebates, and applicable credits to be returned to an SFA, as long as they were properly considered in the solicitation document.

SOURCE:

USDA Memo SP 15-2008, Allowability of Procurement Fees in SFA Contracts, March 12, 2008.